

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICK TYRONE KILLIAN
a.k.a. RICKY TYRONE KILLIAN
a.k.a. RICKIE TYRONE KILLIAN
a.k.a. RICK KILLIAN
1081 Redleaf Trail
Lincolnton, NC 28092

Registered Nurse License No. 452935

Respondent.

Case No. 2012-451

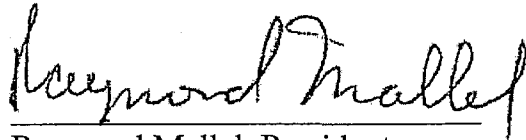
OAH No. 2012040709

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on March 18, 2013.

IT IS SO ORDERED this 16th day of February, 2013.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RICK TYRONE KILLIAN,
a.k.a. RICKY TYRONE KILLIAN,
a.k.a. RICKIE TYRONE KILLIAN,
a.k.a. RICK KILLIAN,

Registered Nurse License No. 452935,

Respondent.

Case No. 2012-451

OAH No. 2012040709

PROPOSED DECISION

The matter came on regularly for hearing on September 12, 2012, in Los Angeles, California. Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings, presided.

Thomas Rinaldi, Deputy Attorney General, represented Louise Bailey, M.Ed., R.N., Executive Officer (complainant) of the Board of Registered Nursing (Board). Respondent Rick Tyrone Killian, also known by the names listed in the above caption, appeared and represented himself.

Evidence was received and the case was argued. The record was left open to permit complainant and respondent to discuss settlement of the case. When the parties did not submit a settlement to the Office of Administrative Hearings, the case was submitted for decision at the close of business on September 26, 2012. The Administrative Law Judge makes the following factual findings, legal conclusions and order.

FACTUAL FINDINGS

Jurisdiction and Parties

1. Complainant brought the Accusation in her official capacity. Rick Tyrone Killian (respondent) filed a request for hearing contesting the Accusation's charges and this hearing ensued.

2. The Board issued registered nursing license number 452935 (license) to respondent on April 30, 1990, and the license has been in effect since that date. Unless the Board renews respondent's license, it will expire on March 31, 2014.

Respondent's Criminal Convictions

3a. On December 9, 2004, the Superior Court of California, County of Los Angeles, in case number 4MT10930, convicted respondent upon his nolo contendere plea of violating Vehicle Code section 12500, subdivision (a) (driving without a driver's license), a misdemeanor. The court suspended imposing respondent's sentence, placing him instead on summary probation for 24 months subject to conditions, including that he pay a fine and perform eight days of community service. The court also ordered respondent not to drive without proof of insurance or a driver's license, and to obey all laws.¹

3b. The court revoked respondent's probation on June 14, 2005, for his failure to appear and pay his fine, but reinstated it on March 9, 2009. His probation was again revoked on July 9, 2009, when he failed to appear for his community service hours. On December 28, 2010, the court modified respondent's probation by eliminating the community service requirement and sentencing him to 13 days in jail. The court terminated respondent's probation on January 3, 2011, after he presented proof that he had completed his jail term.

3c. Respondent's crime occurred on or about June 28, 2004, when he admittedly drove an automobile without a valid driver's license.

4a. On December 22, 1997, the Municipal Court, Van Nuys Judicial District, Los Angeles County, in case number 7PN07161, convicted respondent on his nolo contendere plea of violating Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance), a misdemeanor. The court suspended imposing respondent's sentence and placed him on summary probation for 24 months subject to various conditions, including that he serve 90 days in jail with four days credit, pay restitution of \$100, abstain from purchasing any controlled substance, refrain from possessing drug paraphernalia, submit to urine analysis testing if requested by a police officer in a subsequent drug investigation, and obey all laws. The court gave respondent permission to serve his jail time in a residential drug treatment program.

4b. In lieu of serving jail time, respondent completed a 90-day residential treatment program in late 1998. As of April 20, 1999, respondent had not paid the court-ordered \$100 restitution fine.

¹ The court also convicted respondent of violating Vehicle Code section 16028, subdivision (a) (failure to produce proof of automobile insurance), an infraction, in the same criminal case. The court ordered him to pay a fines and assessments of \$160 or, in lieu of payment, perform 27 hours of community service.

4c. The crime occurred on October 12, 1997, at about 11:45 a.m. Respondent was under the influence of a controlled substance when police officers detained him. He exhibited signs consistent with drug use, such as hyperactivity, pacing back and forth, profuse sweating, grinding his teeth, burns and blisters on his fingers, and muscle twitching. Admitting he used methamphetamine that day, respondent told police, "I used at about 7:00 a.m. this morning, I snorted methamphetamine, I use about every pay day, every two weeks." Respondent also had drug paraphernalia in his possession consisting of seven hypodermic needles. The police officers observed old track scars consistent with use of needles on both arms.

5a. On December 22, 1997, the Municipal Court, Van Nuys Judicial District, Los Angeles County, in case number 7PN06708, convicted respondent upon his nolo contendere plea of violating Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance), a misdemeanor. The court suspended imposing respondent's sentence and placed him on summary probation for 24 months subject to various conditions, including that he serve 90 days in jail with three days credit, pay restitution of \$100.00, abstain from purchasing any controlled substance, refrain from possessing drug paraphernalia, submit to urine analysis testing if requested by a police officer in a subsequent drug investigation, and obey all laws. The court gave respondent permission to serve his jail time in a residential drug treatment program, which he opted to do.²

5b. On February 2, 1998, the court ordered respondent to attend three Narcotics Anonymous (NA) meetings per week while he awaited entry into the Cri-Help residential treatment program. As of May 4, 1998, he had attended only nine NA meetings, significantly less than the required three meetings per week. Respondent entered the Cri-Help program on May 14, 1998 and completed the 90-day program. The record does not show that respondent ever paid the \$100 restitution fee.

5c. The crime occurred on September 23, 1997, at 12:30 p.m. when police detained respondent for being under the influence of a controlled substance. Police officers went to another person's apartment because they were investigating a report of illegal drug use. The officers arrested respondent who was there with three other men. Police officers at the scene observed that respondent showed outward symptoms of being under the influence of a controlled substance. His pupils were dilated; he was agitated and hyperactive and displayed body tremors. He also had old needle track marks and puncture wounds on his arm, and a fresh puncture wound on his left arm. After he was taken to the police station, respondent told police officers that "the last time [he] snorted was between Saturday night or Sunday morning."

² It was not clear from the record that the sentence for the conviction mentioned in Factual Finding 4a was concurrent with the sentence for the conviction in Factual Finding 5a, but it is inferred that they were concurrent because both convictions occurred on the same date and the sentences were substantially identical.

6a. On July 18, 1996, the Municipal Court of Los Angeles County, in case number 6HL01828, convicted respondent on his nolo contendere plea of violating Penal Code section 602, subdivision (j) (trespassing: burning a fire on property), a misdemeanor. The court suspended imposition of sentence and placed respondent on summary probation for 12 months under the following terms and conditions: serve one day in jail with credit for one day served, obey all laws, do not possess any narcotics or drugs or paraphernalia, do not associate with known drug users except while attending a drug abuse program, and pay restitution of \$100.00. Respondent was originally charged with willfully and unlawfully possessing a hypodermic needle and syringe, in violation of Business and Professions Code section 4149. That charge was dismissed when respondent pled to the trespassing charge.

6b. The crime occurred on May 13, 1996; respondent was in another person's apartment at about 4:20 p.m. with other people present when the police arrived. Respondent gave police permission to search his person and they found a syringe in his fanny pack. Police also found a glass pipe and two plastic bags containing a white powdery substance resembling methamphetamine on the premises, but there were other people in the apartment and it was not established who the pipe or the substance belonged to. The evidence did not show that respondent used or possessed illegal drugs in committing this crime.

Other Drug-Related Activities

7a. On January 7, 2009, respondent was arrested at about 10:14 p.m. on a street in West Hollywood, California, for being under the influence of a controlled substance and possession of methamphetamine. A police officer observed him walking erratically on the sidewalk, describing his gait as stiff-legged and jerky. Several times, the officer observed him stumble, almost hitting several parked cars along the sidewalk. When the officer came into contact with respondent, he observed that respondent was sweating profusely despite the cold weather and his pupils were dilated, he constantly licked his lips, and he displayed other signs of being under the influence of a controlled substance. Respondent was charged with violating Health and Safety Code sections 11377, subdivision (a) (illegal possession of a controlled substance) and 11550, subdivision (a) (under the influence of a controlled substance). On May 8, 2009, the Los Angeles County Superior Court placed respondent on deferred entry of judgment for three years on his plea of guilty to the charge of illegally possessing a controlled substance and placed respondent in a diversion program pursuant to Penal Code section 1000 et seq. in case number 9BV00435. The court ordered respondent to pay fees of \$300, enroll in and complete an approved controlled substance treatment program, obey all laws, abstain from use or possession of illegal narcotics and associated paraphernalia, and refrain from associating with known drug users.

7b. On July 14, 2009, respondent failed to appear in court to show he had paid his \$300 fine, and on November 9, 2009, the court found that respondent had a positive drug test. Ultimately, respondent completed the treatment program leading the court to set aside his guilty plea and dismiss the charges against him pursuant to Penal Code section 1000.3. The court terminated the proceedings against respondent on November 15, 2010.

8. Respondent admitted that he used methamphetamine over an extended period of time beginning around 1994. As shown above, he has had several encounters with the criminal justice system related to his illegal use of controlled substances.

Rehabilitation, Mitigation and Circumstances in Aggravation

9a. Respondent became a vocational nurse in his native North Carolina in 1976. He entered the United States Navy for about two years between 1979 and 1981 and was honorably discharged. While in the Navy he served in San Diego in the medical corps setting up mobile surgical units and patient triage. When he left the Navy, he lived in Seattle, Washington for about 12 years. Between 1984 and 1987, he attended community college in Washington and obtained his associate degree in nursing. He became licensed as a registered nurse in Washington and was employed at various hospitals working for a nurse registry.

9b. He arrived in Los Angeles in 1990 and became a licensed registered nurse in this State. He worked as a nurse at Kaiser Hospital and most recently worked at Cedars-Sinai Medical Center. He took a disability leave in 2010 to attend a 20-week outpatient drug program sponsored by the Veteran's Administration Greater Los Angeles Healthcare System, which required his attendance four hours per day, five days per week (the VA program). He voluntarily attended the program beginning April 12, 2010, and completed it October 15, 2010. He was discharged from his job at Cedars-Sinai soon after returning for reasons apparently unrelated to his drug use.

10a. Respondent began using methamphetamine (meth) after he came to California. He was socializing with a group of friends who were a negative influence on him and with whom he abused meth. In connection with his last arrest (Factual Finding 7a and 7b, *ante*), respondent completed the court-ordered 20-week drug treatment program. Respondent found the court-ordered program too unstructured. It did not require daily attendance, the sessions lasted only two hours per day, and it required him to undergo only three drug tests at times of his own choosing. After he completed the court-ordered program, he decided to attend the VA program because it was more structured and intensive.

10b. Respondent left California to return to North Carolina in January 2011. He took seriously the teachings of the VA program and decided to get away from the negative influences in Los Angeles. His unemployment insurance ran out and he lives in his mother's home in Lincolnton, a small town in North Carolina. Before he left Los Angeles, he attended Alcoholics Anonymous three times per week. He does not attend meetings in North Carolina and has not been drug tested since he completed the VA program.

10c. In August 2011, respondent began interning as a substance abuse intern at a drug counseling program in Charlotte, North Carolina called, "A Turning Point Counseling and Consulting LLC" (Turning Point). He does not have a car but relies on public transportation or gets rides from friends to get to his job in Charlotte. His internship includes

office work and answering phones from which he earns about \$100 per month, and he helps conduct group therapy sessions three days per week. He is training to become a licensed substance abuse counselor in North Carolina and will take the North Carolina State test to obtain his license in December 2012.

11. Respondent has not used illegal substances for two years and has no desire to do so. He no longer sees any of the friends he used drugs with. He was motivated to quit using meth because "his life was going nowhere." He took a good look at his life and realized he had lost all ambition. Now, he wants to help others avoid the same path of drug abuse.

12. Respondent claims he was never under the influence of controlled substances while working at his job as a registered nurse and there is no evidence to controvert his assertion. He was never tempted and did not divert drugs for his own use from any hospitals in which he worked.

13. The Board learned of respondent's history of convictions and history of related drug use when he disclosed them in his last renewal application. Respondent cooperated with the Board's investigation of this case.

14. Respondent was largely credible in testifying as a witness at the hearing. There were some inconsistencies between his testimony and other evidence in the case. For example, he mentioned at hearing that he had limited his drug use to about once per month, but told police when he was arrested in October 1997 that he used drugs every two weeks on pay day. (Factual Finding 4c, *ante*.)

15a. Respondent presented an August 27, 2012 letter attesting to his character from Ricky Payant, Certified Substance Counselor from the Turning Point program where respondent currently works. Mr. Payant did not mention how much he knew about respondent's history. He described respondent as a "competent employee [who] takes pride in the success of the organization." The letter continues by mentioning that respondent's "insight, caring and sensitivity are such that he develops almost instant rapport with clients. He is capable of handling any crisis situation which may occur. He works well with other staff members and is highly respected in the community."

15b. His pastor at the Herndon Chapel A.M.E. Zion Church in Lincolnton, North Carolina, also wrote a letter vouching for respondent's good character. Respondent attends the church. Pastor Tabatha M. Stanback's letter, dated September 6, 2012, says that respondent "has favorably impressed and blessed those he has come in contact with in and outside of the church." Also, he "has the ability and the drive to continue his career in nursing, for he is very involved in [the] senior ministry." According to the pastor's letter, the "seniors enjoy his compassion, attitude, and his genuine love [and] caring for others."

Cost Recovery

16. The Board presented evidence showing reasonable costs incurred in prosecuting this case of \$ 5,772.50. The Board did not seek reimbursement for any investigative costs.

LEGAL CONCLUSIONS

Applicable Law and Causes for Discipline

1. Jurisdiction exists pursuant to Business and Professions Code³ section 2750, which allows the Board to suspend or revoke a license of a licensee for any reason provided in the Nursing Practice Act (§ 2700 et seq.), commencing with section 2750. (Factual Findings 1 and 2.)

2a. Sections 490 and 2761, subdivision (f), allow the Board to suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction or act is considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of the registered nurse to practice in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs., tit. 16, § 1444.)

2b. Cause exists pursuant to sections 490 and 2761, subdivision (f) to suspend or revoke respondent's registered nurse license for his four criminal convictions as alleged in paragraph 15 of the Accusation by reason of Factual Findings 3a through 6b. Respondent's convictions for driving without a license and trespass, considered separately, may not be substantially related to the qualifications, functions or duties of a registered nurse, but they are substantially related when considered with his two drug-related convictions. Considered together, his four crimes show a pattern of disregard for the law which evidences a present or potential unfitness to practice in a manner consistent with the public health, safety, or welfare. Two of his convictions involved use of illegal drugs (Factual Findings 4a through 5c). Illegal use of controlled substances by a registered nurse is also substantially related to the qualifications, functions, or duties of the licensee. Section 2762, which defines unprofessional conduct to include specified drug-related conduct, independently recognizes that a licensee's illegal use of controlled substances is inconsistent with a registered nurse's qualifications, functions, or duties.

3. Section 2761, subdivision (a), allows the Board to suspend or revoke a nurse's license for unprofessional conduct. Unprofessional conduct includes illegally obtaining or possessing a controlled substance or dangerous device, or self-administering a controlled

³ All further statutory references to the Business and Professions are cited by section number.

substance without a valid prescription (§ 2762, subd. (a)) or illegally using any controlled substance to an extent or in a manner dangerous or injurious to himself. (§ 2762, subd. (b).) Section 2762, subdivision (c), defines unprofessional conduct as being convicted of a criminal offense involving the consumption or self-administration of a controlled substance.

4. Cause exists to suspend or revoke respondent's registered nursing license pursuant to sections 2761, subdivision (a) and 2762, subdivision (a) based on Factual Findings 4a through 5c and 8. Respondent was convicted of two crimes that, by his own admission, involved illegally self-administering a controlled substance. The Board did not prove, as alleged in the Accusation, that respondent illegally self-administered a controlled substance or used or possessed a dangerous device in connection with his trespassing crime. The police found a syringe in his fanny pack, but the Board did not prove that he unlawfully possessed the syringe. (Factual Findings 6a and 6b.)

5. Cause exists to suspend or revoke respondent's registered nursing license pursuant to sections 2761, subdivision (a) and 2762, subdivision (b) in that he unlawfully used a controlled substance in a manner dangerous to himself based on Factual Findings 4a through 5c, 7a, 7b, and 8.

6. Cause exists to suspend or revoke respondent's registered nursing license pursuant to sections 2761, subdivision (a) and 2762, subdivision (c) in that he was convicted of crimes in which he illegally used and self-administered a controlled substance based on Factual Findings 4a through 5c and 8.

7. Cause does not exist to suspend or revoke respondent's license as alleged in paragraph 16a of the Accusation. The Board did not prove that respondent was placed on deferred entry of judgment and ordered into a diversion program for violating Health and Safety Code section 11378 (possession of a controlled substance for sale).

Rehabilitation Criteria

8. The Board has adopted suggested guidelines (Guidelines) for issuing disciplinary orders and probation conditions when a licensee violates the Nursing Practice Act. (§ 2700 et seq.) The Guidelines also include rehabilitation criteria to apply in determining whether to suspend or revoke a license in a given case. (Cal. Code Regs., tit. 16, § 1444.5.) The Board has also adopted a separate regulation that includes criteria to use in evaluating the rehabilitation of a licensee when considering whether to suspend or revoke a license based on a criminal conviction. (Cal. Code Regs., tit. 16, § 1445, subd. (b).) The rehabilitation criteria include the nature and severity of the acts, offenses or crimes under consideration; actual or potential harm to a patient or the public; a prior disciplinary record; number or variety of current violations; the respondent's criminal record; the time that has elapsed since respondent committed the crimes, acts or offenses; whether the licensee has complied with his criminal probation conditions; whether a conviction has been expunged; overall criminal record; and evidence of mitigation and rehabilitation. (Cal. Code Regs., tit. 16, § 1445, subd. (b); Guidelines at p. 2.)

9a. Respondent has made progress in overcoming his substance abuse issues. He voluntarily attended and completed a 20-week VA drug program and also attended AA meetings while he still lived in Los Angeles. There was no evidence that respondent placed any patient in danger while he was on the job or otherwise performing his duties as a nurse and he has no record of prior discipline against his license. It is noteworthy that to help him change his mindset and his social environment, he left Los Angeles to return to his hometown in North Carolina and live with his mother. He is interning as a substance abuse counselor while training to obtain a license in North Carolina as a certified substance abuse counselor, conducting group therapy sessions as part of his intern duties. He has taken very positive steps toward rehabilitation as set forth in Factual Findings 8 through 15b. Yet, respondent did not express insight into how he would avoid further involvement with drugs in the future should he come back to California to work as a registered nurse. He attends church, but does not attend NA or AA meetings (he testified that these programs were not available in the small town where he resides), is not tested for the presence of drugs in his system, and has not been tested since he left Los Angeles.

9b. His drug problem involved at least two convictions and one additional arrest involving the illegal use of drugs spanning a 16-year period. The facts surrounding the two convictions and arrest, as well as his testimony, indicate that he abused drugs. By his own admission, his substance abuse began sometime around 1994, and he testified that it ended two years ago. For a registered nurse, the nature of his conduct is severe considering the length of time he was abusing drugs, his four convictions from 1996 to 2004, and his drug-related arrest in 2009. He has not had any convictions expunged and he did not comply with his criminal probation conditions as provided in Factual Findings 3b, 4b, 5b and 6b. While he may not have harmed any patients, his use of drugs in public places creates a risk of harm to the public.

10a. The Guidelines include further criteria to determine rehabilitation for a licensee with drug abuse offenses, including successful completion of a drug treatment program with a minimum duration of six months. The treatment program may be a combined in-patient/out-patient and aftercare program. The program must include the following elements: a chemical-free treatment philosophy; individual or group counseling; random and documented biological fluid screening; participation in nurse (or other professionals') support group; education about addictive disease; adherence to a 12-step recovery program philosophy or its equivalent; written documentation of participation in 12-step recovery groups or an equivalent program; for registered nurse licensees, and employment in nursing for a minimum of six months with documentation (from the employer) that the employer was aware of the previous drug abuse problems. The Guidelines require the documentation to substantiate that while employed, there was no evidence of continued drug use and that the respondent performed nursing functions in a safe and competent manner. (Guidelines at p. 14.)

10b. Respondent did not prove that the VA drug program considered alone or with the court-ordered diversion program met the specific criteria in the preceding paragraph. (Factual Findings 7a, 7b, 9b and 10a.) The VA program and court-ordered program were both 20-weeks in duration. Unfortunately, that is virtually the entire information respondent offered about those programs. As to his employment as a nurse, he has not been so employed on a continuous basis since 2010.

11. According to section 2708.1, "[p]rotection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (§ 2708.1.) Further, the Board's Guidelines recommend revoking respondent's license given the number of convictions and the longevity of his drug abuse. (Guidelines at pp. 5 and 6-7.)

12. Respondent testified at the hearing that he would return to California if the Board grants him a probationary license (with the most stringent conditions); however, respondent did not offer sufficient evidence of rehabilitation to satisfy concerns that the public interest would be protected if he received a probationary license. Given his lengthy history of drug abuse and his failure to attend a structured drug treatment program or work as a nurse over the last two years, it would not be in the public interest to allow respondent to retain his license.

Cost Recovery

13. Section 125.3 allows "an administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The Board presented evidence showing reasonable costs incurred in enforcing (prosecuting) this case of \$5,772.50 pursuant to section 125.3. The Board did not seek reimbursement for any investigative costs. The amounts reflect the Office of the Attorney General's actual prosecution costs. Respondent introduced evidence of his current inability to pay these costs.

ORDER

Registered Nurse License Number 452935 issued to respondent Rick Tyrone Killian, also known as Ricky Tyrone Killian, Rickie Tyrone Killian, and Rick Killian, is revoked.

//

//

//

//

If and when respondent's license is reinstated, he shall pay the Board's enforcement costs pursuant to Business and Professions Code Section 125.3 in the amount of \$ 5,722.50. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

Dated: December 13, 2012



JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

Accusation Case No. 2012-451

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 KIMBERLEY J. BAKER-GUILLEMET
Deputy Attorney General
4 State Bar No. 242920
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2533
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2012-451

13 **RICK TYRONE KILLIAN,**
14 **a.k.a. RICKY TYRONE KILLIAN,**
15 **a.k.a. RICKIE TYRONE KILLIAN,**
16 **a.k.a. RICK KILLIAN**

A C C U S A T I O N

17 1081 Redleaf Trail
Lincolnton, North Carolina 28092

18 Registered Nurse License No. 452935

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about April 30, 1990, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 452935 to Rick Tyrone Killian, also known as (aka) Ricky Tyrone
26 Killian, aka Rickie Tyrone Killian, aka Rick Killian (Respondent). The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 March 31, 2012, unless renewed.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3

4
5
6
7

8

9

- 0
- 1.
- 2
- 3

4
5
6
7

8
9
0
1
2
3

4
5
6
7

8

1 7. Section 2761 states, in pertinent part:

2 "The board may take disciplinary action against a certified or licensed nurse or deny an
3 application for a certificate or license for any of the following:

4 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5

6 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
8 Act] or regulations adopted pursuant to it.

9

10 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
11 functions, and duties of a registered nurse, in which event the record of the conviction shall be
12 conclusive evidence thereof."

13 8. Section 2762 states, in pertinent part:

14 "In addition to other acts constituting unprofessional conduct within the meaning of this
15 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
16 chapter to do any of the following:

17 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
18 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
19 administer to another, any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
21 defined in Section 4022."

22 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
23 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
24 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
25 himself or herself, any other person, or the public or to the extent that such use impairs his or her
26 ability to conduct with safety to the public the practice authorized by his or her license.

27 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
28 self-administration of any of the substances described in subdivisions (a) and (b) of this section,

1 or the possession of, or falsification of a record pertaining to, the substances described in
2 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
3 thereof."

4 9. Section 2764 provides, in pertinent part, that the expiration of a license shall not
5 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
6 to render a decision imposing discipline on the license.

7 10. Section 2811(b) provides, in pertinent part, that the Board may renew an expired
8 license at any time within eight years after the expiration.

9 11. Health and Safety Code section 11550, subdivision (a) states, in pertinent part:

10 "No person shall use, or be under the influence of any controlled substance which is (1)
11 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
12 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
13 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
14 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
15 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
16 by the state to dispense, prescribe, or administer controlled substances."

17 REGULATORY PROVISIONS

18 12. California Code of Regulations, title 16, section 1444 states, in pertinent part:

19 "A conviction or act shall be considered to be substantially related to the qualifications,
20 functions or duties of a registered nurse if to a substantial degree it evidences the present or
21 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
22 safety, or welfare."

23 CONTROLLED SUBSTANCE

24 13. "Methamphetamine," is a Schedule II controlled substance as designated by Health
25 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
26 pursuant to section 4022.

27 ///

28 ///

1 **COST RECOVERY**

2 14. Section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Convictions of Substantially Related Crimes)**

8 15. Respondent is subject to disciplinary action under section 2761, subdivision (f) and
9 490, as defined in California Code of Regulations, title 16, section 1444, in that Respondent has
10 been convicted of crimes substantially related to the qualifications, functions or duties of a
11 registered nurse as follows:

12 a. On or about December 9, 2004, after pleading nolo contendere, Respondent was
13 convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a)
14 [driving without a driver's license] in the criminal proceeding entitled *The People of the State of*
15 *California v. Rick Killian* (Super. Ct. Los Angeles County, 2004, No. 4MT10930). The Court
16 sentenced Respondent to perform eight (8) days of community service, pay a fine and placed him
17 on summary probation for 24 months. Respondent was later sentenced to serve thirteen days in
18 jail due to a probation violation. The circumstances surrounding the conviction are that on or
19 about June 28, 2004, Respondent drove a vehicle without a valid driver's license.

20 b. On or about December 22, 1997, after pleading nolo contendere, Respondent was
21 convicted of one misdemeanor count of violating Health and Safety Code section 11550,
22 subdivision (a) [under the influence of a controlled substance] in the criminal proceeding entitled
23 *The People of the State of California v. Ricky Tyrone Killian* (Super. Ct. Los Angeles County
24 1997, No. 7PN07161). The Court sentenced Respondent to serve 90 days in Los Angeles County
25 Jail and placed him on 24 months probation, with terms and conditions. The circumstances
26 surrounding the conviction are that on or about October 12, 1997, during an investigation by the
27 Los Angeles Police Department, Respondent was contacted. While the officers were speaking to
28 Respondent, they observed that he was hyperactive, pacing back and forth, scratching his fingers,

1 and grinding his teeth. In addition, they observed that he had muscle twitches, sweated profusely,
2 and had burns and blisters on his exposed fingers. Respondent spontaneously stated to the
3 officers that he had hypodermic needles in a blue metal container that he was carrying. One of
4 the officers opened the container and found seven hypodermic needles, a violation of Health and
5 Safety Code section 11364 [possession of narcotic paraphernalia]. Respondent was placed under
6 arrest. During the booking procedure Respondent stated, "I used about 7:00 this morning, I
7 snorted a line of meth, I use about every payday, every two weeks."

8 c. On or about December 22, 1997, after pleading nolo contendere, Respondent was
9 convicted of one misdemeanor count of violating Health and Safety Code section 11550,
10 subdivision (a) [under the influence of a controlled substance] in the criminal proceeding entitled
11 *The People of the State of California v. Ricky Tyrone Killian* (Super. Ct. Los Angeles County
12 1997, No. 7PN06708). The Court sentenced Respondent to serve 90 days in Los Angeles County
13 Jail and placed him on 24 months probation, with terms and conditions. The circumstances
14 surrounding the conviction are that on or about September 23, 1997, during a narcotics
15 investigation by the Los Angeles Police Department, Respondent was contacted. While speaking
16 to Respondent, the officers observed that he displayed signs and symptoms of being under the
17 influence of a central nervous system stimulant which was later identified as Methamphetamine.
18 The officers observed that Respondent's pupils were dilated and that he was agitated and
19 hyperactive, displayed body tremors and had a fresh puncture wound on his left exposed arm.
20 Respondent was placed under arrest. During the booking procedure, Respondent stated, "The last
21 time I snorted was between Saturday night or Sunday morning."

22 d. On or about July 18, 1996, after pleading nolo contendere, Respondent was convicted
23 of one misdemeanor count of violating Penal Code section 602, subdivision (j) [trespass: injure
24 property] in the criminal proceeding entitled *The People of the State of California v. Ricky Tyrone*
25 *Killian* (Super. Ct. Los Angeles County 1996, No. 6HL0182801). The Court sentenced
26 Respondent to serve one (1) day in Los Angeles County Jail and placed him on 12 months
27 probation, with terms and conditions. The circumstances surrounding the conviction are that on
28 or about May 13, 1996, Respondent was contacted at a home of a third party by police officers

1 who were given information from an anonymous informant that there was possible narcotic
2 activity at an apartment. When the officers arrived, Respondent was sitting on the couch with
3 another individual. Respondent cooperated with officers and consented to them searching his
4 person. The officers recovered a syringe from Respondent's fanny pack. Officers also recovered
5 a glass pipe and two (2) "zip-loc" baggies containing a white substance resembling
6 methamphetamine; however, all occupants of the apartment denied any knowledge of the items.
7 Respondent was arrested for violating Business and Professions Code section 4149 [possession of
8 a hypodermic needle and/or syringe].

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Illegal Possession of Controlled Substance and/or Narcotic Paraphernalia)**

11 16. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
12 defined in section 2762, subdivision (a), in that Respondent was found to be in possession of a
13 controlled substance, narcotic paraphernalia and/or dangerous device as described above at
14 paragraph 15, subparagraphs (b) through (d). Complainant refers to, and by this reference
15 incorporates, the allegations set forth above in paragraph 15, subparagraphs (b) through (d),
16 inclusive, as though set forth fully. In addition, Respondent was arrested and placed on diversion
17 for being in possession of a controlled substance as described in more detail below:

18 a. On or about April 20, 1994, Respondent was placed in a diversion program for
19 violating Health and Safety Code section 11378 in the criminal proceeding entitled *The People of*
20 *the State of California v. Rickie Tyrone Killian* (Municipal Ct. of Van Nuys, County of Los
21 Angeles, No. LA016036). On or about May 31, 1996, the diversion was terminated and the count
22 was dismissed. The circumstances surrounding the diversion sentence are that on or about
23 December 3, 1993, while riding as a passenger in a car, Respondent was contacted by police
24 officers when the officers pulled the driver over for a routine traffic stop. During a search of the
25 vehicle, the officers observed an open bottle of beer on the passenger floorboard, a plastic baggie
26 containing an off-white substance resembling methamphetamine, a .22 magnum revolver under
27 the driver's seat of the vehicle, a briefcase behind the driver's seat containing a white powder
28 substance appearing to be baking powder (commonly used as a cutting agent for cocaine), a

1 pocket scale with a white powder residue resembling cocaine, a cosmetic bag containing syringes
2 and 47 saw blades with price tags still attached. Respondent and the driver of the vehicle were
3 placed under arrest for violating Health & Safety Code section 11350 [possession of controlled
4 substance]. The residue on the scale tested positive for cocaine and the substance inside the
5 baggie tested positive for methamphetamine.

6 THIRD CAUSE FOR DISCIPLINE

7 (Use/Under the Influence of a Controlled Substance)

8 17. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
9 defined in section 2762, subdivision (b), in that Respondent was found to be under the influence
10 of a controlled substance, in violation of Health and Safety Code section 11550, subdivision (a).
11 Specifically, on or about September 23, 1997 and October 12, 1997, by his own admission,
12 Respondent used and/or was under the influence of a controlled substance. Complainant refers
13 to, and by this reference incorporates, the allegations set forth above in paragraph 15,
14 subparagraphs (b) and (c), inclusive, as though set forth fully. In addition, Respondent was
15 arrested and placed on diversion for being under the influence of a controlled substance as
16 described in more detail below:

17 a. On or about May 8, 2009, Respondent was placed on deferred entry of
18 judgment/diversion for violating Health and Safety Code section 11377, subdivision (a) in the
19 criminal proceeding entitled *The People of the State of California v. Ricky Tyrone Killian* (Super.
20 Ct. Los Angeles County 2009, No. 9BV00435). The circumstances around Respondent's
21 placement in diversion are that on or about January 7, 2009, during an investigation by the Los
22 Angeles County Sheriff's Department, Respondent was observed walking erratically, stumbling,
23 and almost hitting several parked cars. While speaking to Respondent, the officers observed that
24 he displayed signs and symptoms of being under the influence of a central nervous system
25 stimulant. He had dilated pupils, sweated profusely, and constantly licked his lips. Respondent
26 was subsequently arrested for violating Health and Safety Code section 11550, subdivision (a)
27 [under the influence of a controlled substance]. During the booking procedure, a search of
28 Respondent's person revealed a small clear green zip lock bag containing a white crystal

1 substance resembling methamphetamine, a violation of Health and Safety Code section 11377,
2 subdivision (a) [possession of a controlled substance]. Respondent refused to submit to a
3 toxicology screening.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Conviction Involving the Use of a Controlled Substance)**

6 18. Respondent is subject to disciplinary action under section 2761, subdivision (a), as
7 defined in section 2762, subdivision (c), in that Respondent has been convicted of crimes
8 involving the use of a controlled substance. Complainant refers to, and by this reference
9 incorporates, the allegations set forth above in paragraph 15, subparagraphs (b) and (c), inclusive,
10 as though set forth fully.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board issue a decision:

- 14 1. Revoking or suspending Registered Nurse License No. 452935, issued to Rick
15 Tyrone Killian, aka Ricky Tyrone Killian, aka Rickie Tyrone Killian, aka Rick Killian;
16 2. Ordering Rick Tyrone Killian to pay the Board the reasonable costs of the
17 investigation and enforcement of this case, pursuant to section 125.3; and
18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: February 21, 2012 Louise R. Bailey
20 LOUISE R. BAILEY, M.ED., RN
21 Interim Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California
25 Complainant

26 LA2011501580
27 60657464.docx
28